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5 UNITED STATES DISTRICT COURT  
6 NORTHERN DISTRICT OF CALIFORNIA  
7

8 MARLOWE BROWN,  
9 Plaintiff,

No. C 12-6513 SI (pr)

**ORDER OF DISMISSAL**

10 v.

11 KEVIN CHAPPELL, Warden;  
12 et al.,

13 Defendants.  
14 \_\_\_\_\_/

15 Marlowe Brown, an inmate incarcerated at San Quentin State Prison, filed this *pro se*  
16 civil rights action under 42 U.S.C. § 1983, complaining about the inclusion of allegedly false  
17 information in his prison records that he contended amounted to libel and slander. The court  
18 reviewed the complaint and dismissed it with leave to amend. Brown then filed an amended  
19 complaint, which the court now reviews pursuant to 28 U.S.C. § 1915A.

20 When it dismissed the original complaint with leave to amend, the court explained that  
21 defamation alone is not a constitutional violation, even when done under color of state law, and  
22 that reputation is not a liberty or property interest protected by the Due Process Clause unless  
23 it is accompanied by some more tangible interests. *See* Docket # 3 at 2 (citing *Paul v. Davis*,  
24 424 U.S. 693 (1976)). The court granted leave to amend so that Brown might attempt to allege  
25 a § 1983 defamation claim that satisfied *Paul v. Davis*. The court also directed Brown that he  
26 needed to name a defendant capable of being sued and show a basis for liability for each  
27 defendant that he wanted to sue.  
28

1 Brown's amended complaint (Docket # 5) fails to cure the defects identified in the order  
2 of dismissal with leave to amend. Brown failed to allege a cognizable § 1983 defamation claim  
3 because the amended complaint (a) did not allege that the allegedly defamatory statements  
4 injured plaintiff's reputation and (b) did not allege that the injury to reputation caused the denial  
5 of a federally protected right, or was inflicted in connection with a federally protected right, or  
6 created both a stigma and a tangible burden on Brown's ability to obtain a right or status  
7 recognized by state law. Additionally, although Brown named the warden as a defendant in his  
8 amended complaint, he failed to link the warden to his claim by alleging any personal  
9 involvement by the warden in the constitutional deprivation or a causal connection between the  
10 warden's conduct and a constitutional violation.

11 Brown attached to his amended complaint a classification score sheet, and alleged that  
12 his ability to obtain "certain assignments and incentives" was affected by the incorrect  
13 information in his records. *See* Docket # 5 at 1. The incorrect information on the classification  
14 score did not amount to a violation of Brown's federal right to due process. Although California  
15 has created a regulatory scheme from which a protected liberty interest in classification and  
16 custody designation might arise, the liberty in question generally is not protected by the Due  
17 Process Clause because the deprivation of a correct classification or custody designation cannot  
18 be characterized as one of "real substance," i.e., it does not impose "atypical and significant  
19 hardship on the inmate in relation to the ordinary incidents of prison life," *Sandin v. Conner*, 515  
20 U.S. 472, 484 (1995), or "inevitably affect the duration of [a] sentence," *id.* at 487. And the  
21 changes in conditions relating to classification and reclassification do not implicate the Due  
22 Process Clause itself. *See Hernandez v. Johnston*, 833 F.2d 1316, 1318 (9th Cir. 1987) (citing  
23 *Moody v. Dagget*, 429 U.S. 78, 88 n.9 (1976)) (no constitutional right to particular  
24 classification).


25 This action is dismissed because the amended complaint fails to state a claim upon which  
26 relief may be granted. Further leave to amend will not be granted because it would be futile.  
27 Although Brown cannot proceed in federal court, he might consider pursuing any administrative  
28 and state court remedies that might be available to him for the correction of allegedly false

1 prison records. *See generally* 15 Cal. Code Regs. § 3450.

2 The clerk shall terminate the “motion” at Docket # 5. The document at Docket # 5 is the  
3 amended complaint, and not a motion. The clerk shall then close the file.

4 IT IS SO ORDERED.

5 Dated: September 23, 2013

  
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SUSAN ILLSTON  
United States District Judge